

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201508760	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/30/2015 12:40 PM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 3/30/2017	EO SOL 3/30/2017	
Date/Time CV Reported Mon, 10/05/2015 4:52 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/15/2015 11:12 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Anthony Russo	06252	921733	040 DET
2. POM Jose Romero	18022	940670	040 DET
3. SDS Michael Lopuzzo	03261	882662	040 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Anthony Russo	Abuse: Det. Anthony Russo refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
B.DT3 Anthony Russo	Abuse: Det. Anthony Russo entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C.DT3 Anthony Russo	Force: Det. Anthony Russo used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Jose Romero	Force: PO Jose Romero used physical force against § 87(2)(b)	§ 87(2)(b)
E.SDS Michael Lopuzzo	Abuse: SDS Michael Lopuzzo did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 30, 2015, § 87(2)(b) called 911 to file a complaint about this incident (BR 01 and 02). The call was disconnected before the operator could connect him to IAB. On October 5, 2015, an IAB investigator called § 87(2)(b) back and obtained further details (BR 03). This case was referred to the CCRB on October 15, 2015.

There is no video footage of this incident, but an allegation is captured on audio obtained from the aforementioned communications CD (BR 01 and 02).

On September 11, 2015, § 87(2)(b)'s mother, § 87(2)(b) filed a complaint report with the 40th Precinct against § 87(2)(b) alleging that he had menaced her (BR 04). The investigation of this complaint report was assigned to Det. Anthony Russo of the 40th Precinct Detective Squad.

On September 30, 2015, at approximately 12:30 p.m., Det. Russo and another officer of the 40th Precinct Detective Squad, PO Jose Romero, visited § 87(2)(b)'s home, located at § 87(2)(b) in the Bronx, to obtain further information from her about her complaint against § 87(2)(b). § 87(2)(b) told Det. Russo and PO Romero that that on September 11, 2015, § 87(2)(b) had menaced her with a knife. § 87(2)(b) also told Det. Russo and PO Romero that § 87(2)(b) was at home, and permitted them to enter the premises to speak with him.

Once inside, Det. Russo and PO Romero proceeded to § 87(2)(b)'s room, which was on the second floor. § 87(2)(b) opened his door but refused to come outside until he was shown an arrest warrant, although the officers did not possess one. § 87(2)(b) called 911 on his cell phone. While on the call with 911, § 87(2)(b) repeatedly asked Det. Russo for his name and shield number. Det. Russo did not respond to § 87(2)(b) (**Allegation A**). § 87(2)(b) was ultimately able to read his shield number from his badge, which Det. Russo wore at his hip, although he alleged that Det. Russo attempted to cover it from his view.

Det. Russo then pushed his way into § 87(2)(b)'s room (**Allegation B**), followed by PO Romero. In the course of attempting to arrest § 87(2)(b) Det. Russo allegedly punched him once or twice on his face (**Allegation C**), while PO Romero allegedly kicked him in his back (**Allegation D**).

§ 87(2)(b) was transported to the 40th Precinct stationhouse. While in the holding cells, § 87(2)(b) requested medical attention from an officer, identified by the investigation as Sgt. Michael Lopuzzo. SDS Lopuzzo told § 87(2)(b) "We'll take care of you," but § 87(2)(b) never received medical attention while in police custody (**Allegation E**).

§ 87(2)(b) was arrested and charged with § 87(2)(b) (BR 05).

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to § 87(2)(b)'s arrest.
- On December 14, 2015, a Notice of Claim request was submitted. The results will be added to the case file upon receipt (BR 06).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the second CCRB complaint filed by § 87(2)(b) (BR 08):

Page 2

CCRB Case # 201508760

- § 87(2)(b)
- Det. Russo has been a member of the service for 17 years. There are 9 prior allegations against him across 6 cases that occurred between 2002 and 2008, none of which was substantiated.
- PO Romero has been a member of the service for 9 years. There are 7 prior allegations against him across 3 cases that occurred between 2007 and 2014, none of which was substantiated.
- SDS Lopuzzo has been a member of the service for 31 years. There are 10 prior allegations against him across 5 cases, the following of which was substantiated:
 - In CCRB case 201202292, an allegation of discourtesy was substantiated. The Board recommended Instructions. SDS Lopuzzo received no disciplinary action.

Findings and Recommendations

Explanation of Subject Officer Identification

- Although Det. Russo claimed not to remember § 87(2)(b) requesting his name and shield number, § 87(2)(b) described the officer who did so as a white male, 5'11" to 6'1" tall, with average build, in his 30s to 40s, with either faded hair or a completely bald head, which matches the pedigree information of Det. Russo. Additionally, § 87(2)(b) described Det. Russo as working with a Hispanic male, which matches the description of PO Romero. Furthermore, the shield number that § 87(2)(b) was eventually able to read from Det. Russo's uniform was provided as "F292," which, while not precise, does loosely match Det. Russo's shield number as 06252. § 87(2)(g)
- Although both Det. Russo and PO Romero entered § 87(2)(b)'s room, it is undisputed that Det. Russo was the first to enter. § 87(2)(g)
- It is undisputed that both Det. Russo and PO Romero used some level of physical force against § 87(2)(b) to effect his arrest. § 87(2)(g)
- § 87(2)(b) described the officer who allegedly refused to obtain medical attention for him as a white or Hispanic male, 5'6" to 5'8" tall, with chubby build, glasses, and graying hair, who appeared to be in his late 40s. This description matches that of SDS Lopuzzo, a white male, § 87(2)(b) old, 5'9" tall, 240 pounds, with graying black hair, brown eyes, a moustache, and glasses. § 87(2)(g)

Allegation A – Abuse of Authority: Det. Anthony Russo refused to provide his name and shield number to § 87(2)(b)

Allegation B – Abuse of Authority: Det. Anthony Russo entered and searched § 87(2)(b) in the Bronx.

It is undisputed that § 87(2)(b) provided consent for officers to enter her home. § 87(2)(g)

It is undisputed that multiple minutes after § 87(2)(b) opened his bedroom door, he attempted to shut it, and that Det. Russo prevented him from doing so by placing his foot in the door. It is also undisputed that Det. Russo then pushed his way fully into § 87(2)(b)'s room, where § 87(2)(b)'s arrest was effected.

§ 87(2)(b) (BR 09 and 10) said that on September 30, 2015, at approximately 12:40 p.m., he was asleep in his bedroom, which is on the second floor of his mother's, § 87(2)(b)'s, house, located at § 87(2)(b) in the Bronx. § 87(2)(b) does not pay rent to § 87(2)(b). § 87(2)(b) was awakened by knocking at his bedroom door. § 87(2)(b) assumed that it was his mother, § 87(2)(b) and asked what she wanted. § 87(2)(b) through the door, told § 87(2)(b) that there were people there looking for him. § 87(2)(b) opened the door. § 87(2)(b)'s room is small, and he was able to open the door of his bedroom while still seated on his bed.

Upon opening his door, § 87(2)(b) saw two officers, identified by the investigation as Det. Russo and PO Romero. Although they were in plainclothes, § 87(2)(b) immediately recognized them as police officers. § 87(2)(b) was with them. § 87(2)(b) asked § 87(2)(b) "Why are they here?" § 87(2)(b) said, "Remember that time you put a knife in my face?" Det. Russo then told § 87(2)(b) "We need to speak to you. Please get dressed." § 87(2)(b) requested to see an arrest warrant. Det. Russo displayed to him a piece of paper, but only very briefly, so that § 87(2)(b) could not read it in its entirety. § 87(2)(b) has seen arrest warrants before, and knew that this was not an arrest warrant. § 87(2)(b) said, "That's not a warrant and I'm not speaking to you without legal representation present." Det. Russo repeatedly said that he needed to speak to § 87(2)(b) and § 87(2)(b) repeatedly refused to do so.

§ 87(2)(b) keeps a kitchen knife in his room for his own protection, as he lives "in the hood." § 87(2)(b) said the knife is typically stored above the lintel of his door. § 87(2)(b) acknowledged it was possible that the knife fell to the floor from above the lintel during the course of this incident, but denied that he ever attempted to grab the knife, or that the knife was ever in his bed.

While speaking to Det. Russo, § 87(2)(b) called 911. While on the phone with 911, § 87(2)(b) repeatedly requested Det. Russo's badge number. § 87(2)(b) alleged that Det. Russo did not provide this information to him, and attempted to cover his badge, which he wore at his hip, from § 87(2)(b)'s view with his hand. § 87(2)(b) was nonetheless able to read his shield, which he provided to the 911 operator and later to the CCRB as "F292" § 87(2)(g)

This allegation is captured upon the communications CD (BR 01 and 02). At 00:29 minutes in the communications CD, § 87(2)(b) says, "Please get away from my door, sir! What's your name and your badge? Um, his badge number is...why are you covering that badge, sir? I have the right to see your badge. Excuse me, can you move your badge? Excuse me, let me see your badge. No, let me see your badge. Excuse me sir." A male voice may say something at 00:45 seconds, but it is unintelligible under § 87(2)(b)'s voice. § 87(2)(b) says, "No, I don't have to put on

some clothes. Let me see your badge." At 00:50 seconds, § 87(2)(b) says, "His badge number is F252."

§ 87(2)(b) then attempted to shut the door. Det. Russo prevented him from doing so by inserting his foot into § 87(2)(b)'s room. Det. Russo then pushed the door open and entered § 87(2)(b)'s room, followed by PO Romero.

In her telephone statement (BR 11), § 87(2)(b) confirmed that she spoke to Det. Russo and PO Romero outside of her residence, told them that § 87(2)(b) had menaced her on an earlier date and was home, allowed them to enter the premises, and escorted them upstairs to § 87(2)(b)'s room. § 87(2)(b) also confirmed that § 87(2)(b) does not pay rent. When § 87(2)(b) answered his door, he repeatedly refused to speak with officers. § 87(2)(b) corroborated that § 87(2)(b) requested the name and shield number of Det. Russo, and that Det. Russo attempted to cover his shield.

Det. Russo (BR 12) said that he was assigned to investigate § 87(2)(b)'s complaint against § 87(2)(b). The complaint as he initially received it was lacking information, and so he went to speak with § 87(2)(b) and brought PO Romero along to translate from Spanish. § 87(2)(b) communicated to PO Romero that § 87(2)(b) had menaced her with a knife and that she wanted him removed from her home. § 87(2)(b) informed the officers that § 87(2)(b) was present in the home. § 87(2)(b) allowed Det. Russo and PO Romero inside and guided them to the second floor, where § 87(2)(b)'s room could be found.

Det. Russo knocked on the door. § 87(2)(b) who was seated on his bed, opened the door slightly. Det. Russo asked, "Are you § 87(2)(b)?" § 87(2)(b) replied, "Yes." Det. Russo said, "I need to talk to you." § 87(2)(b) said, "No, you don't," and attempted to shut the door. Det. Russo prevented him from doing so by placing his foot into the door. Det. Russo at this time observed that § 87(2)(b) had a foot-long kitchen knife in his bed, part of which was visible from beneath the sheets near where § 87(2)(b) sat. § 87(2)(b) reached down for the handle of the knife with one hand. Once Det. Russo observed the knife, he pushed his way into § 87(2)(b)'s room. PO Romero followed Det. Russo into the room. Det. Russo later vouchered this knife (BR 43).

Det. Russo did not believe that § 87(2)(b) was ever on his phone during this incident. Det. Russo did not recall § 87(2)(b) ever requesting his name or shield. Det. Russo denied ever attempting to hide his shield from § 87(2)(b)'s view.

PO Romero (BR 13) said that he translated § 87(2)(b)'s statement to Det. Russo. PO Romero noted that § 87(2)(b) said § 87(2)(b) had menaced her with a knife, that he was not following the rules of the house, and had been getting violent. § 87(2)(b) also said she feared for her safety and wanted § 87(2)(b) removed from her home. § 87(2)(b) told PO Romero and Det. Russo that § 87(2)(b) was at home, and allowed them to enter the premises. § 87(2)(b) walked with them to the room on the second floor where § 87(2)(b) could be found.

When PO Romero and Det. Russo knocked on § 87(2)(b)'s door, § 87(2)(b) answered by opening the door slightly. PO Romero and Det. Russo both identified themselves as police officers and said, "We just want to talk to you. Just come out." § 87(2)(b) repeatedly refused, eventually calling 911. PO Romero initially did not remember hearing § 87(2)(b) request Det. Russo's name or shield number. PO Romero said his recollection was refreshed after reviewing the communications CD, though he still did not remember how Det. Russo responded to § 87(2)(b)'s request. PO Romero did not see Det. Russo attempt to cover his shield, but noted that he may not have been in a position to see this even if it did occur, as he was standing slightly behind Det. Russo.

PO Romero noted that § 87(2)(b) attempted to shut the door on them, and that Det. Russo inserted his foot into § 87(2)(b)'s room to prevent him from shutting the door. Almost

immediately upon doing so, Det. Russo yelled, “Knife!” PO Romero did not see the knife at this juncture, and could not identify the exact moment at which he observed it, though he knew that he was fully inside § 87(2)(b) s room when he first observed it. It was a kitchen knife, about a foot long including the blade and handle. When PO Romero first saw the knife, it was on the floor next to § 87(2)(b) s bed. Det. Russo thereafter pushed his way into § 87(2)(b) s room. PO Romero followed behind him.

Absent consent or exigent circumstances, no private home may be entered by the police to arrest an occupant if an arrest warrant has not been obtained, even if they have probable cause to make an arrest. Payton v. New York, 445 U.S. 573 (1980) (BR 14) In People v. Vasquez, 298 A.D.2d 230 (2002) (BR 15), the court maintained that officers reasonably believed that a defendant’s relative had apparent authority to consent to a search of the premises.

Where two or more individuals share a common right of access to or control of the property to be searched, any one of them has the authority to consent to a warrantless search. The presence of a protesting co-occupant at the scene of the search does not invalidate the authority of the other occupants to consent to a search of the shared premises, as an individual who possesses the requisite degree of control over specific premises have their own right to permit an official inspection f the premises that is not circumscribed by any reasonable expectation of privacy belonging to co-occupants. People v. Cosme, 48 N.Y.2d 286 (1979) (BR 16)

A legal lessee has a reasonable expectation of privacy in the leased premises, and the lessor of property lacks the requisite authority to consent to a warrantless search of leased property. People v. Ponto, 103 A.D.2d 573 (2nd Dept., 1984) (BR 17)

A warrantless entry is not invalid when a defendant knowingly and voluntarily presents himself to public view; in People v. Ashcroft, 33 N.Y.3d 249 (2006) (BR 18) officers who reached across a threshold to pull a defendant from his home after he answered the door were found not to have violated Payton v. New York.

According to Patrol Guide Procedure 203-09, officers must clearly state their name, rank, shield, and command, or otherwise provide them, to anyone who requests this information (BR 19).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Det. Anthony Russo used physical force against § 87(2)(b)

Allegation D – Force: PO Jose Romero used physical force against § 87(2)(b)

While it is undisputed that Det. Russo and PO Romero used some level of physical force against § 87(2)(b) § 87(2)(g) It is also undisputed that § 87(2)(b)

§ 87(2)(b) provided some physical resistance to his arrest. § 87(2)(g)

Once Det. Russo and PO Romero pushed their way into § 87(2)(b)'s room, § 87(2)(b) (BR 10 and 11) moved backwards on his bed away from the officers and pushed Det. Russo away by pressing his feet into Det. Russo's stomach. Det. Russo reached for § 87(2)(b)'s arms. § 87(2)(b) screamed his address to the 911 operator before flinging his cell phone away. PO Romero also crossed the bed to reach § 87(2)(b) gripped his left arm, placed it in a handcuff, and then handcuffed the loose end to § 87(2)(b)'s headboard. Det. Russo and PO Romero then pulled § 87(2)(b) off of the bed.

§ 87(2)(b) was positioned with his handcuffed left arm extended behind him and his free right arm underneath his body holding himself in a one-arm push-up position. Det. Russo repeatedly said, "Stop resisting!" § 87(2)(b) screamed, "I'm not resisting!" Det. Russo punched § 87(2)(b) at least once on his face, causing a black eye, a picture of which § 87(2)(b) provided (BR 21 and 22). PO Romero was positioned behind § 87(2)(b) and kicked him on his upper and middle back, resulting in bruises and abrasions to his back and his right shoulders, pictures of which § 87(2)(b) provided (BR 23 through 29). § 87(2)(b) had no memory of how he was finally placed in handcuffs, though he noted that the handcuffs left marks on his wrists, pictures of which he also provided (BR 30 through 36). § 87(2)(b) also provided a picture of an abrasion to his left cheek (BR 37).

§ 87(2)(b) obtained medical treatment at § 87(2)(b) after his release from police custody on § 87(2)(b) (BR 20). § 87(2)(b) told medical staff that he was assaulted by officers in his home. § 87(2)(b) complained of left hand pain including decreased sensation to his left thumb. Medical staff noted visible bruises and abrasions to § 87(2)(b)'s face, arms, and body. A physical exam noted bruising to his right eye and pain upon palpation to § 87(2)(b)'s right jaw. A CT scan was taken of § 87(2)(b)'s facial bones and an x-ray was taken of his left wrist. There was no fracture or dislocation. § 87(2)(b) was given Naproxen for his pain and discharged.

§ 87(2)(b) (BR 11) said that she remained outside of § 87(2)(b)'s room during the struggle and did not witness the use of any physical force against him.

Det. Russo (BR 12) said that when he first entered § 87(2)(b)'s room, § 87(2)(b) was standing. Det. Russo gripped § 87(2)(b) around his waist from the front. PO Romero took out his handcuffs and tried to grip § 87(2)(b)'s hands. PO Romero, Det. Russo, and § 87(2)(b) then fell to the bed, whereupon § 87(2)(b) began to push Det. Russo away by kicking at his chest. Det. Russo and PO Romero were able to flip § 87(2)(b) onto his stomach on the bed, and then pushed him off of the bed to the floor. Throughout the struggle, Det. Russo and PO Romero repeatedly told § 87(2)(b)

§ 87(2)(b) “Stop. Give us your hands.” Eventually PO Romero was able to place one of § 87(2)(b) s hands into handcuffs, and to immobilize this one hand by cuffing it to the headboard of § 87(2)(b) s bed. Det. Russo and PO Romero were thereafter able to handcuff § 87(2)(b) Det. Russo observed no injuries to § 87(2)(b) and never heard him complain of such. Neither Det. Russo nor PO Romero sustained any injuries; however, Det. Russo noticed after the struggle that his shirt had been torn, as had PO Romero’s slacks. Det. Russo did not recall punching § 87(2)(b) or kicking him.

PO Romero (BR 13) § 87(2)(g) added that at some point while struggling with § 87(2)(b) on the bed § 87(2)(b) was positioned atop PO Romero, who was lying on his back, and that § 87(2)(b) placed his forearm across PO Romero’s throat, which restricted PO Romero’s breathing for a few seconds before Det. Russo was able to pull § 87(2)(b) off of PO Romero from behind. PO Romero denied ever punching or kicking § 87(2)(b) PO Romero noted that due to the spatial constraints of § 87(2)(b) s room and the manner in which they were positioned it would have been impossible for him to kick § 87(2)(b) in his back. PO Romero also noted that once the struggle moved to the bedroom floor he was positioned in front of, not behind, § 87(2)(b)

Aside from § 87(2)(b) s arrest photograph, which depicts the bruise to § 87(2)(b) s right eye (BR 38) as well as the abrasion on his left cheek, there is no other police documentation regarding the use of physical force against § 87(2)(b) The communications CD (BR 01 and 02) does not capture any sounds of the struggle.

Officers must use the minimum force necessary to effect an arrest. Patrol Guide Procedure 203-11 (BR 39).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: SDS Michael Lopuzzo did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) (BR 10 and 11) alleged that when he was lodged in the holding cells of the 40th Precinct stationhouse, he was visited by an officer, identified by the investigation as SDS Lopuzzo. § 87(2)(b) told SDS Lopuzzo that he wanted medical attention. SDS Lopuzzo told § 87(2)(b) “We’ll get you taken care of,” but § 87(2)(b) never received medical care while at the 40th

Precinct stationhouse. When § 87(2)(b) arrived to Central Booking, EMS screened him but refused to admit him to the hospital for his injuries.

SDS Lopuzzo (BR 40) acknowledged that he was present when two uniformed officers escorted § 87(2)(b) into the stationhouse, searched him, and lodged him in the holding cell. SDS Lopuzzo at no point heard § 87(2)(b) ask for medical attention. Once § 87(2)(b) was lodged, SDS Lopuzzo returned to his office. SDS Lopuzzo had no further interaction with § 87(2)(b). SDS Lopuzzo denied ever refusing § 87(2)(b) medical attention. SDS Lopuzzo did not recall § 87(2)(b) having any injuries and his recollection was not refreshed by reviewing the arrest photograph of § 87(2)(b).

On October 27, 2015, a subpoena was submitted for § 87(2)(b)'s Pre-Arrestment Screening Form, which is still outstanding (BR 41). Requests for a medical treatment of prisoner form were returned with negative results (BR 42 and 44).

§ 87(2)(g)

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date